COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Franklin W. Olin College of Engineering	)	**D.T.E. 01-95**

INITIAL BRIEF
OF
FRANKLIN W. OLIN COLLEGE OF ENGINEERING

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I. INTRODUCTION

A. Summary of Olin's Position

In this proceeding, Franklin W. Olin College of Engineering ("Olin") has sought a ruling from the Department of Telecommunications and Energy, to the extent necessary, that Olin may take electric service from Wellesley Municipal Light Plant ("WMLP") for Olin's new campus buildings and related facilities. Although there have been very few decisions by the Department regarding franchise rights, this case is particularly unique for many reasons. Not only has Boston Edison Company ("BECO") admitted that there are no other similarly sized potential new customers on any BECO service territory borders (Exh. IR-OC-2-14), but WMLP is the one and only utility ever to serve either the exact area of Olin's new buildings (in Needham) or an area within over 1000 feet of such buildings. *See* Exh. BE-ARJ-4. This case is also unique in that Olin shares many services and facilities with Babson College – the neighboring property owner and sister college that was the entity that carved out a portion of its real estate to sell to Olin. Section I.B.2. *infra*.

In short, Olin contends that the area where Olin's new buildings are located, though in Needham, are in WMLP's service territory -- not Boston Edison's franchise area. WMLP shares this position and Babson College, though not a party, also supports this position. The rationale behind this position is that: (i) WMLP historically served the exact area of the new buildings; (ii) WMLP's facilities are closer and do not require a system upgrade; (iii) Olin can achieve greater efficiency and economy by taking service from WMLP; and (iv) taking service from WMLP allows Olin to implement collaborative activities with Babson that yield other efficiencies for both colleges. This decision was also influenced by Olin's prior dissatisfaction with the reliability of BECO's service at other pre-existing buildings owned by Olin on property that is not the subject of this proceeding, as well as Olin's perception of BECO's customer service as unresponsive. Exh. IR-BE-1-29; RR-WMLP-3. Further, Olin has material interests in real estate in Wellesley, which interests were integral to establishment of its campus and wholly unrelated to any plans for obtaining electric service. Exh. IR-BE-1-7. Finally, Olin and Babson plan to transfer further property interests in Wellesley to Olin for jointly owned administrative buildings and for electric switchgear location. Exh. IR-BE-1-5 Suppl.; Exh. IR-BE-1-4 Suppl.

The benefits that would accrue to Olin and its scholarship-based education mission (described below), should service from WMLP be allowed, are very significant. First, Olin can obtain service from WMLP that is of better reliability than BECO service options (*see* Section IV.A.3, below), but with an up-front cost of only about 1% of the costs of the comparable BECO option, yielding immediate savings to Olin of about $1,600,000 (depending on assumptions used) (this fact and the comparison of taking service from BECO or WMLP is

discussed in more detail in Section IV.A.2., below). Additionally, Olin will save in the range of $400,000 per year due to the energy cost differential between WMLP and BECO – 60% savings on about $1,000,000 of charges from BECO. Exh. IR-BE-1-8, Suppl. Att. 1-8B.

Further, it has been Olin's consistent position that as a legal matter, municipal boundaries do not invariably and inflexibly equate to service territory borders – especially as here where the municipal utility has provided exclusive electric service to the area in question. (*See* Section II.B., below.)

B. Factual Background

1. Description of Olin College

Olin is a new higher educational institution along the border of Wellesley and Needham in an area where WMLP had previously provided and continues to provide electric service to Babson College. Olin recently purchased from Babson the real estate on which it is constructing its new institutional buildings. These buildings (and Phase II buildings) are on Lot 2.[1] Exh. IR-BE-1-1, Att. BE-1-1A. Olin began academic operations with 30 students in September 2001. Olin College was chartered by the Commonwealth in 1997 and will provide students an education with an emphasis on rigorous preparation in engineering, science, team-based design, communications, independent projects and research, and principles of business and entrepreneurship. Any student admitted to Olin College will receive a Franklin W. Olin scholarship of four years of tuition and room – approximately $130,000 in today's dollars. Exh. OC-1, ¶ 1. Olin currently is utilizing temporary modular buildings for housing and

[1] Other pre-existing residential buildings on separate lots nearly 1,800 feet away from the new buildings on Lot 2 were bought at the same time. Exh. IR-BE-1-4; Exh. IR-BE-1-1, Att. 1-1A. Such buildings were always served by BECO and Olin seeks no change. Exh. OC-1, ¶ 2.

classrooms and is using a variety of Babson College facilities while its permanent buildings are being constructed on the portion of the property nearby Babson buildings and right on the town line. [*See* Exh. IR-BE-1-4, BE-1-5, BE-1-14, BE-1-34]. Olin plans to occupy its newly constructed buildings in September 2002. Exh. IR-BE-1-17.

Babson, too, is an academic institution that owns land straddling the Wellesley-Needham border. *See* Exh. IR-BE-1-1, Attachments BE-1-1A, B, C. Babson's electrical service historically has been provided by WMLP through facilities located in Wellesley, even though some of its property and buildings are located across the line in Needham. *See* Exh. IR-BE-2-19, BE-2-32. In particular, the only electrical service ever provided to the area of Olin's new campus (*i.e.*, a portion of Babson's property that Olin purchased) – security lighting – was provided by WMLP. Exhibit OC-1 (Hannabury Affidavit, ¶ 2); Exh. WMLP-1, p. 3. In fact, a portion of a roadway with WMLP-provided security lighting that was located on the area of Olin's new campus had to be relocated in order to facilitate construction. Exhibit WMLP-2, Exh. 1 (Attachment A hereto) shows the location of light poles supplied by WMLP until they were removed for construction of Olin's new buildings. Boston Edison has never provided service to the property in question. Exh. OC-1, ¶ 2; Exh. WMLP-1, p. 3. Further significant facts are that WMLP also serves two and half buildings owned by Babson located in Needham just across a parking lot from Olin's new buildings. Exhibit WMLP-2, Exh. 1 (Attachment A hereto) also clearly shows the proximity of those buildings to Olin's new buildings. Similarly, Babson's buildings in Wellesley are only a couple hundred feet from Olin's new buildings. *Id.*

2. Olin and Babson Have A Unique Cooperative/Collaborative Relationship

The collaborative relationship between Olin and Babson is a very significant fact in this proceeding. Because of that relationship, the lines between legal entities and property bounds are blurred. In many operational and contractual aspects, Olin and Babson are as one. That ultimate fact provides ample support for the Department to allow the same electric service to Olin's new buildings as to the neighboring Babson buildings and campus.

Olin College was actually born out of the concept of collaboration with Babson. This relationship was documented in a "Collaboration Agreement" that provides for obtaining efficiencies by sharing numerous functions, such as:

(i) **Joint/Shared Administrative Services**

1. electrical service
2. joint purchasing of goods and services
3. transportation services
4. campus security and related public safety issues
5. campus and facilities maintenance
6. registration and student record keeping
7. community relations
8. publications/brochures/school catalogs
9. financial administration
10. advisory committees
11. information systems
12. human resources
13. mail delivery, copying services and purchasing service

(ii) **Joint/Shared Co-curricular Activities**

14. dining and related food services
15. health services
16. career services
17. library facilities
18. athletic programs, including intramural sports

(iii) **Joint/Shared Academic Activities**

19. liberal arts and science appointments
20. cross-registration

21. programs in business and engineering, including product development
22. field projects
23. entrepreneurial studies initiatives
24. foreign language and international studies opportunities
25. summer programs
26. joint/shared faculty appointment
27. jointly sponsored classes
28. curriculum integration

Exh. IR-BE-1-7, Att. BE-1-7C, pp. 3-4; Exh. IR-BE-1-28. The colleges even share certain officers. *Id.*; Exh. IR-BE-1-39. Further, Olin and Babson contemplate greater collaboration in the future. *Id.*; Tr. 3: 368.

Academically, the colleges would complement each other by their different, but related, programs (entrepreneurial engineering and business). Exh. OC-2, p. 2. Physically, Olin's real estate was carved out of Babson's property by deed dated March 7, 2000. The colleges are connected and each college already has extensive and legal rights on the other's campus. *Id.* The record shows this overlap will only increase. *Id.* Exh. IR-BE-1-28. The two colleges even have planned a jointly owned administrative building in Wellesley and a joint academic building in Needham. Exh. IR-BE-1-1 Suppl., Att. BE-1-1(d), Map 7. *See* Attachment B hereto.[2] Operationally, the colleges are sharing various electric services, administrative services, and maintenance activities, have contracted for a common natural gas supply, and plan to coordinate on various telecommunications/information technology services. Exh. IR-BE-1-41.

C. Procedural History

[2] Attachment B is the map included in Olin's initial filing (Exh. OC-1, Exh. A) with limited descriptive features, contained on other maps in the record, superimposed electronically. As such, it is not an exhibit in this form, but a graphical description (fully derived from record evidence) to assist the reader.

On November 9, 2001, Olin filed the instant Petition seeking a declaratory ruling by the Department that Olin may receive electric service from the only utility that has ever served the property in question: WMLP. Petition, ¶ 3. WMLP's electric services in Needham historically to Babson and on a proposed basis to Olin would be delivered on real estate owned by the customer in Wellesley and delivered over private property and privately owned electric lines into Needham. *See* Exh. IR-BE-1-1; Exh. IR-BE-1-5; Exh. IR-BE-1-5 Suppl. Subsequently, on November 27, 2001, Boston Edison Company ("BECO" or "Boston Edison") petitioned to intervene and filed an Opposition to Olin's request. On November 29, 2001, WMLP also petitioned to intervene. At a procedural conference held January 23, 2002, the Department granted the petitions to intervene filed by BECO and WMLP. On January 31, 2002 BECO filed a Motion for Expedited Order to Maintain Status Quo Ante, which was followed by a series of responsive pleadings by each of Olin, WMLP and BECO. On February 12, 2002, BECO filed a Motion to Join Babson as a Party to The Proceeding. Olin and WMLP opposed such Motion by filings made February 20, 2002 and Babson College also opposed that Motion, but requested Leave for Limited Appearance as a Non-Party. The Department heard oral argument on the BECO Motion for Expedited Order on February 23, 2002. Both of the BECO Motions are currently pending.

Between the time of the procedural conference and the beginning of hearings on March 28, 2002, each of the parties issued and responded to a considerable number of discovery requests. Also, on March 11, 2002, BECO and WMLP filed written testimony of their witnesses and on March 27, 2002, BECO, Olin and WMLP each filed written testimony in rebuttal of testimony of the other parties. Additionally, all parties and Department staff made

a site visit on March 28, 2002, inspecting the Olin and Babson campuses, the location of the MWRA metering station in Needham that is served by WMLP and the BECO substation #148. The afternoon of March 28, 2002 hearings commenced. On April 26, 2002, after six days of hearings the record was closed except for outstanding responses to record requests. This brief is filed in accordance with the established procedural schedule.

II. WMLP'S SERVICE TO THE AREA AT ISSUE IN THIS PROCEEDING IS PROPER

This section discusses the factual and practical reasons why provision of electric service by WMLP to the area of Olin's new buildings is proper. First, there is no grant of right to either BECO or WMLP to serve this area. Second, WMLP historically provided electric service to such area and BECO never has. Third, Olin currently has and will have real estate interests in Wellesley. Fourth, the very close collaborative relationship of Olin with Babson (both as seller of the property in question and as a sister college) establishes a basis for Olin's taking service from WMLP that is just as strong as if Olin had an even greater physical presence in Wellesley. Section III.B., below describes the very significant benefit to Olin that would result from taking service from WMLP.

A. No Grant Of Franchise To The Area In Question Ever Occurred

The Department has previously found it to be an important fact whether a utility claiming an exclusive franchise to a given area had indeed received such a right – either by statute or by municipal grant. *Ecological Fibers, Inc.*, D.T.E. 85-71, p. 4 (1985). Though BECO was at first unable to locate any documentation of such grant (Exh. IR-OC-1-26), it ultimately provided a number of contracts between various entities and the Town of Needham. Exh. IR-OC-1-26 Suppl. In a number of cases, BECO now (by corporate succession or

contract assignment) has the rights granted by such contracts. However, the rights granted in those documents were really quite limited and clearly do not include the right to serve any of the land owned by Olin, much less the smaller area along the Wellesley border on which the new buildings are being constructed and where WMLP has provided service for decades. Exh. WMLP-1, p. 3. Specifically, the rights now residing in BECO under such documentation are only:

1. Ownership of poles, wires, etc. sold by Needham on February 14, 1908;

2. Right to be paid for street lighting, as required by the Town by contract dated February 25, 1908 and by assignment dated July 29, 1903;

3. Ownership of poles, wires, etc. sold by the partners of Greendale Chemical and Electric Lighting Co. dated Match 6, 1903; and

4. Right to serve Needham Town street lighting system and Town buildings and for charging the Town's batteries for fire alarms, as granted by contract dated July 15, 1903.

Ibid.

B. WMLP Has Historically And Continuously Served The Location Of Olin's New Buildings.

One significant reason Olin should be allowed to take electric service for its new campus buildings from WMLP is that WMLP has provided electric service to the exact location for over 30 years. Exh. WMLP-1, p. 3. Specifically, WMLP's service to Babson included electricity for security and street lighting on the exact location of Olin's new buildings. Exh. WMLP-2, Exh. 1 (Attachment A hereto). WMLP's electric service to Babson in Needham continues to this day to immediately adjacent parking lots and nearby Babson owned buildings – located just on the other side of the parking lot. Exh. WMLP-1, pp. 3-4.

BECO never apparently felt the need to challenge WMLP's service to those areas until Olin arrived. WMLP provides electric service to Babson buildings in Wellesley only about 100 yards from Olin's new buildings. Although BECO marked on its map, Exhibit BE-ARJ-4, the area in Needham on Olin property that WMLP has served, the record shows that such map understated such area by about 50%. Tr. 3: 289.

C. Historical Property Ownership Also Shows The Propriety Of Service By WMLP.

Olin's request to the Department for authorization to take electric service from WMLP was intentionally limited to the area where Olin's new buildings are now being constructed. The record, except for a curious ambiguity on the BECO map (Exhibit BE-ARJ-4)[3] clearly shows such area in question to be Lot 2.

The importance of this fact is that Lot 2 is real estate that Babson formerly owned and sold to Olin and that has real estate improvements that used electric service provided by WMLP for many years. Notably, BECO never provided electric service to Lot 2. Exh. WMLP-1, p. 3. Olin, as the new owner of Lot 2, has simply continued the existing electric service, though on an expanded basis. It is further important that Lot 2 was continuously owned by Babson and used as a part of the educational facilities. Exh. OC-2, p. 5; Exh. IR-BE-1-4. This fact distinguishes Lot 2 from the several smaller lots along Great Plain Avenue that were not either continuously owned by Babson and used by Babson for its educational purposes. *Id*. Specifically, the real estate title documents show that parties other than Babson

[3]Note that the map (Exhibit-IR-BE-1-1, Attachment A) referenced as the source for this part of the BECO map shows Lot 2 as the large northern part of the aggregate Olin property (i.e., the portion of the yellow area to the north and west of the circle segment marked (and owned) by MWRA for its aqueduct). This fact contrasts with the impression given by Exhibit BE-ARJ-4 that Lot 2 is but a small corner of that Lot with no buildings on it.

and that were not an educational institution had previously owned lots 24, 7 and 66. Exh. IR-BE-1-4.

These facts show that several logical analytical approaches yield the consistent conclusion that WMLP should be able to provide electric service to Olin's new buildings. Specifically:

1. Babson continuously owned Lot 2 and used it for educational facilities, just as Olin does now – and the Lot was always and only served by WMLP;

2. The present use of Lot 2 began when Babson was still the owner; and

3. If Babson still owned Lot 2, there would be no question that WMLP ought to provide service where it provides service to the rest of Babson.

Further contributing to this continuity of use is that construction on Olin's new buildings was started even before the property was deeded to Olin. Exh. OC-2, p. 18. There is no less propriety of WMLP's provision of electric service relating to those buildings, before transfer of ownership to Olin, than for the other nearby, borderline buildings on Babson's real estate. BECO has never disputed the propriety of WMLP's service to the three Babson buildings in Needham (two wholly in Needham and one straddling the town line). WMLP's service to Olin's new permanent buildings is equally proper. It would truly be anomalous were that electric service presumably proper for the first three months of construction became improper just because of the recording of the deed in March 2002.

D. Olin's Rights And Activities In Wellesley Are Significant

Even if the Department does not agree that Olin's new buildings are in WMLP's exclusive service territory, or that WMLP's historical service otherwise justifies a continuation thereof, Olin's existing and planned level of activities and realty ownership in Wellesley justify

Olin's taking service from WMLP. Olin already has significant real estate interests in Wellesley, which interests were in place since the inception of Olin's physical presence on the Needham-Wellesley border. Exh. IR-BE-1-18. In connection with the original permitting requirements for the construction of its new buildings, Olin obtained significant easement rights in Wellesley establishing a second entrance to the Olin campus. Such access easement confers to Olin rights over 60,000 square feet of property in Wellesley. *Id*. That easement is for the purpose of entrance to and egress from the Olin campus for emergency situations, necessary work, the faculty and other personnel that are shared by Olin and Babson and for colleges' sports teams. It is notable that this is just one more case of the unique and extensive collaboration that is integral to the Olin-Babson relationship.

Further, the Department should consider the fact that much more extensive property ownership by Olin in Wellesley is planned. Exh. IR-BE-1-18. Specifically, the record shows that Olin and Babson are planning to have a jointly owned administrative building in Wellesley. Exhibit IR-BE-1-1 Supplemental, Map 7.[4] The location of this additional (future) property interest of Olin in Wellesley is shown on Attachment B hereto, labeled "Location for Future Joint Olin/Babson Buildings". In this same context, Olin and Babson are also planning a jointly owned building in Needham. As is the case for the other Babson buildings (*See* Exh. WMLP-2, Exh. A; also as Attachment A hereto, i.e., buildings on far right) in Needham there can be no question that WMLP service there is proper.

[4] It is of little significance that various tasks remain to be done on such a building – Olin is a work in progress. Decisions on permanent electric supply must be made now, even before initial occupancy of the first phase of Olin's new buildings is complete. Thus, it is inevitable that more work remains to be done on construction after Phase I.

As will be discussed at greater length in Sections VI.D. and E. below, that Olin's present and planned property interests in Wellesley (described in the two preceding paragraphs), are entirely related to the ongoing development of Olin's educational facilities is relevant to the legal analysis under the Department's recent decision in *Massachusetts Electric Co.*, D.T.E. 98-122 (2002). There is not even a scintilla of evidence that such rights (existing

or planned) were (or would be) obtained for the purpose of evading BECO's service territory.[5] Amazingly, even Mr. Niro ultimately agreed that the Olin/Babson collaboration and future building would not be for the suspect purposes. Tr. 5: 804, 805.

The extensive collaboration between Olin and Babson, described in Section I.B.2, above, is a truly unique fact that must be considered in assuming the propriety of WMLP providing electric service to Olin's new buildings. Interest in real estate, such as those just discussed, are perhaps the more traditional basis of analysis. However, the extensive collaboration between Olin and Babson is very real and given their sharing of all sorts of utility and maintenance services, *inter alia*, that collaboration make it very reasonable and more efficient for the sister colleges to share an electricity provider. Also, that collaboration in a practical sense yields a continuity of use that diminishes the significance of Babson's transfer of land to Olin as a separate entity.

[5] Even as to the parcel Olin more recently acquired to be the site of its switchgear, the evidence shows reasons for its acquisition other than an effort to avoid BECO service territory:

> We purchased that parcel of land to site our switchgear so that Wellesley could provide service to a point in the Town of Wellesley. I believe that's been their position all along. We've been sensitive to that. The first option was that we would own, and do own, property in the Town of Wellesley. We're now looking at a different option of co-locating the switchgear with Babson switchgear in a different location in the Town of Wellesley.
>
> Tr. 1: 37-38.

In any event, the Department need not spend its time addressing Parcel A because that is no longer the preferred site of the Olin switchgear and Olin is not relying on that as a basis for taking electric service from WMLP. *Id*.; Exh. IR-BE-1-5 Suppl. Even Mr. Niro agreed on this point too. Tr. 5: 801.

E. The Proposed Point Of Electric Service Shows The Reasonableness Of WMLP Serving Olin

Should the Department rule that WMLP may serve Olin, Olin will place its switchgear at the same location as the Babson switchgear on the Babson campus in Wellesley, relatively close to WMLP underground lines on Forest Street. Tr. 3: 377; *See also* Exh. IR-BE-1-5, Att. BE-1-5A. As part of this plan, Olin and Babson will implement another collaborative action and deed an ownership interest to Olin in that land for the switchgear as well as easement rights to connect the switchgear to the Olin campus loop. *Id*. This plan has many benefits to Olin and Babson and has considerable engineering and operational logic. Assuming an expeditious and favorable order from the Department, Olin and Babson will coordinate their efforts and receive savings and efficiencies on construction of the delivery line from the switchgear locations to Olin's internal campus loop. Exh. IR-BE-1-38, 1-38 Suppl. This is because Babson is upgrading both its switchgear and its own campus distribution facilities. Although each college will have its own lines going from the switchgear, it can be installed in conduit at the same time. Further, this plan will yield continuing efficiencies and savings of Olin and Babson better coordinating their switchgear maintenance and potentially expanding their electric system coordination. For example, Olin and Babson may even go so far as sharing switchgear. Tr. 1: 45.

The record is clear that the purpose of locating Olin's switchgear in Wellesley (on land that Olin will own) is purely to achieve the operational efficiencies:

> This plan yields the following savings: the Olin conduit and cable would not have to be as long, Olin could share significant lengths of conduit and a number of manholes with Babson, the shared facilities maintenance people could more effectively maintain the switchgear of each college, and the colleges' respective electric

facilities would be more conducive to a future sharing of switchgear, as has been discussed over the past couple of years.

Exh. IR-BE-1-5 Suppl.

III. OLIN HAS REASONABLY CONCLUDED THAT IT WOULD REALIZE SIGNIFICANT BENEFITS BY TAKING SERVICE FROM WMLP

A. WMLP's System Needs No Upgrades To Serve Olin

WMLP already has in place the facilities necessary to provide service to Olin. Specifically, WMLP has in place a completely underground, three-phase, 13.8 kV circuit – Line 1511 – that provides primary (or "normal") service to Babson, and that would also be used to provide primary service to Olin. Exh. WMLP-1, p. 9; Exh. WMLP-7, pp. 3-4; Tr. 3: 322-24; Exh. IR-BE-2-22. This underground line was placed in WMLP's capital plan in 1997, when the load growth at Babson had become sufficient to cause other WMLP customers to experience a voltage "sag" when Babson's service switched from its normal supply to its back-up supply. Tr. 2: 257-58.[6] WMLP's Board of Directors approved the new line in 1998, and it was completed in late 2001 or early 2002 after a two-year construction period. Tr. 2: 251-52. Because the other customers benefited from the installation, the $250,000 cost was borne by WMLP rather than Babson or any other particular customer. Tr. 2: 256. By the time WMLP first met with Olin in 1999, the underground line had already been approved, and WMLP informed Olin that it would be completed within a year or two. Tr. 2: 255-56. Given that it is now in service, in the event Olin prevails in this proceeding, Line 1511 will be used for Olin's

[6] This voltage "sag" was exacerbated because, at the time, Babson's back-up service originated at BECO Station 148, which had and continues to have serious voltage regulation problems. Tr. 3: 336; Exh. WMLP-1, pp. 7-8.

normal service and, indeed, will be dedicated exclusively to providing power to Olin and Babson. Tr. 3: 322.

WMLP also already has in place a circuit – Line 1531 – that currently provides back-up service to Babson and would also be used to provide back-up service to Olin. Tr. 3: 322-323. Line 1531 comprises approximately 2,341 feet of underground facilities and 7,439 feet of overhead facilities. Exh. IR-BE-8-10.

Both Line 1511 and Line 1531 receive power from BECO's Needham Station 292, Line 1511 via Wellesley Substation 41 and Line 1531 via WMLP's Cedar Hills Substation. Tr. 2: 251; Tr. 3: 336. Accordingly, Babson does not now, and Olin would not, receive either normal or back-up service originating at BECO Station 148. *Id.*[7]

Under Olin's preferred alternative, the WMLP service would connect to Olin switchgear located at the central distribution point on the Babson campus. Exh. IR-BE-8-3. Specifically, Olin switchgear would be installed at the same location on the Babson campus as the Babson switchgear just off of Forest Street in Wellesley. Exh. OC-2, p. 8. Olin-owned lines would then carry the electricity to Olin's permanent distribution loop, located approximately 2,200 feet away. Exh. OC-2, p. 8. Olin would own property interests in the Babson property both on which its switchgear rests and along the route that its conduit and lines traverse. Exh. OC-2, p. 8; Exh. WMLP-1, p. 7. Given that WMLP circuits through which normal service (Line 1511) and duplicate service (Line 1531) would be provided are

[7] Both the bench and BECO witness Amin Jessa evinced some confusion over this point during Mr. Jessa's testimony. *See* Tr. 6: 863-64. Mr. Jessa ultimately conceded, however, that WMLP receives power from BECO Station 292 as well as Station 148, and that he does not know which is used to serve Babson. Tr. 6: 868-69. The WMLP witnesses, by contrast, *do* know, and both were clear that the power for both Line 1511 and Line 1531 originates at Station 292, not Station 148. Tr. 2: 251; Tr. 3: 336.

already in place, the only construction that would be required to connect the Olin switchgear to the WMLP distribution infrastructure would be the installation of approximately 200 feet of cable between WMLP manhole number 24-1 on Forest Street and the Olin switchgear. Exh. IR-BE-8-3.[8]

B. Olin Would Realize Many Benefits By Taking Service From WMLP

Olin would realize significant benefits if permitted to take electrical service from WMLP. These benefits include: (1) the availability of pre-existing service lines that would require virtually no construction time; (2) minimal up-front costs to connect to WMLP's system; (3) high reliability of service; (4) savings on private property line installation and ongoing maintenance thereof; and (5) low ongoing energy costs.

1. The WMLP Lines Are Already in Place and Would Require No Delay for Construction

As set forth above, the lines whereby WMLP would provide both normal and back-up service to Olin are already in place, and thus if Olin takes service from WMLP Olin will not experience the delays that otherwise would be inevitable if WMLP had to construct new facilities. *See, e.g.*, Tr. 3: 322-23. Indeed, the only construction that WMLP would have to perform would be the installation of approximately 200 feet of cable between a manhole on Forest Street and Olin's switchgear. *See* Exh. IR-BE-8-3.

2. WMLP's Up-Front Charge to Olin Would Be Negligible

Second, the cost to Olin for connecting to the WMLP system would be next to nothing:

[8] Another alternative would be for WMLP to connect to Olin switchgear located on a plot of Olin-owned land in Wellesley. *See, e.g.*, Exh. OC-2, p. 9; Exh. IR-BE-8-3. This, however, is not the preferred alternative, and would, among other things, diminish if not eliminate the potential for sharing costs with Babson. *See* Exh. OC-2, p. 8.

WMLP has estimated that the installation of the 200 feet of cable and the connection of Olin's switchgear to the WMLP system could be accomplished for approximately $18,000. Exh. IR-BE-8-3. No other charges to Olin would have to be imposed for connection because WMLP would require no system upgrades for assuming the Olin load. *Cf. Id*.

3. <u>WMLP's Service to Olin Would Be Highly Reliable</u>

Third, WMLP service to Olin would be highly reliable, based on a number of factors:

a. <u>WMLP's Underground Normal Circuit Is Highly Reliable</u>.

As previously noted, Line 1511, the normal supply, is entirely underground. *E.g.*, Tr. 3: 322. BECO itself recognizes that underground service is inherently more reliable than overhead service because it is essentially immune to certain events, such as severe storms, vehicular collision with poles, and animal interference, that can cause outages in overhead lines. *See* Exh. BE-ARJ-1, pp. 9-13; Tr. 4: 617; Tr. 6: 873; Exh. IR-OC-1-10, p. 6 ("Normal Supply completely U[nder]G[round] for best reliability").[9] Indeed, using the industry average figures provided to BECO by its consultant, ABB T&D Power Company, underground facilities are, at 0.02 failures per mile per year, more reliable by approximately a factor of ten than overhead facilities, the average failure rate of which is 0.2 failures per mile per year.

[9] Although the bench appeared to express the view during questioning of Messrs. Niro and Jessa that SAIDI and SAIFI are the relevant measures of reliability, *see*:: 4, 617-18; Tr: 6: 881-82, these measures exclude certain events, such as outages caused by major storms, from the calculations. *See Service Quality Guidelines*, D.T.E. 99-84, Attachment 1, Section V. While excluding such events that are beyond the control of the utility makes sense from a regulatory standpoint, where the primary concern is with the performance of a utility with respect to matters it can control, such events nonetheless are properly a concern of a customer, whose loss of electricity is as much a concern when caused by downed overhead lines after an ice storm as when caused by a utility's equipment failure.

Exh. IR-OC-2-2; Exh. BE-ARJ-1, pp. 9-13; Tr. 6: 871-72.[10]

b. WMLP's Normal and Back-Up Circuits Originate at Different Substations.

The reliability of the WMLP service inherent in the dedicated underground normal supply is further enhanced by virtue of the fact that the duplicate supply, Line 1531, originates from a different substation than does Line 1511, thereby preventing a contingency at the substation powering the normal supply from threatening the back-up supply. Exh. WMLP-1, p. 7.

c. WMLP's Babson/Olin Service is Powered by BECO Station 292.

The power for both Line 1511 and Line 1531 originates at BECO Station 292 rather than at BECO Station 148, which has been plagued by serious and persistent voltage and reliability problems over the past five years. Tr. 3: 336; Exh. WMLP-1, pp. 8-9.

d. WMLP's History of Service to the Babson Area is Exemplary.

WMLP's record of service to the area from which Olin would be served is excellent, with no power outages for at least the last seven years. Exh. WMLP-1, p. 8.

4. Olin Could Lower Its Costs Even Further Through Synergies with Babson

Fourth, Olin, as part of its collaborative arrangement with Babson, would realize significant cost savings by taking service from WMLP. Exh. OC-2, p. 8. Specifically, Olin and Babson could share common manholes and duct bank; Olin and Babson could save on

[10] Although Mr. Jessa affirmatively provided only the average reliability of an overhead distribution circuit (*see* Exh. IR-OC-2-2), the figure for underground circuits can be determined based on Mr. Jessa's prefiled direct testimony. Specifically, with respect to Option 1B, Mr. Jessa reports that the total exposure for the normal line would be 13,200 feet – or exactly 2.5 miles – of underground facilities. Exh. BE-ARJ-1, p. 11. Mr. Jessa further reports that the expected reliability of this line is 0.05 failures per year. *Id*. This translates to a failure rate of 0.02 failures per mile per year.

ongoing maintenance costs by having their switchgear located in a single location; and Olin could take advantage of a more direct route for the duct bank than would otherwise be possible, thereby incurring lesser costs for installing conduit. Exh. OC-2, p. 8. Moreover, under the arrangement, Babson would be responsible for the maintenance and operation of the electrical infrastructure, and Olin accordingly would benefit from Babson's staff of seasoned professionals who have significant experience in troubleshooting and repairing problems with electrical systems as well as a close working relationship with WMLP developed over the years. Exh. WMLP-1, pp. 7-8.

5. Olin Would Realize Substantial and Ongoing Energy Savings By Virtue of WMLP's Low Rates

Fifth, not only would Olin's initial cost of connecting to WMLP be low, but Olin would also benefit on an ongoing basis from WMLP's favorable rates. *See, e.g.*, Exh. OC-2, pp. 6, 12. Indeed, a recent study prepared at the behest of WMLP in which Babson was used as a proxy for Olin, concluded that Olin would have paid WMLP only approximately 7.4 cents per kWh had Olin been receiving metered service from WMLP during calendar year 2001, while Olin's energy costs would have been approximately 60% higher for metered service from BECO. *See* Supp. Exh. IR-BE-8. This conclusion is consistent with the conclusion Olin reached earlier that it could save $400,000-$800,000 annually after buildout. Exh. OC-1, ¶ 1.

6. Conclusion

In sum, Olin would realize a number of significant benefits if permitted to take service from WMLP. Some of these benefits would be in the form of significant cost savings, both up front and over time, which would enable Olin to devote more of its resources to its central

mission of providing, in collaboration with Babson, a high-quality, 100% scholarship-based education to deserving youths at no cost to the students. Exh. OC-1 ¶ 1.

IV. COMPARISON OF WMLP AND BECO PROPOSALS

A. WMLP Service Would Be Far More Beneficial to Olin Than BECO Service

Service to Olin from WMLP would be vastly more beneficial than service from BECO on many grounds, including: (1) far shorter construction time; (2) far lower installation/connection cost; (3) significantly better reliability; (4) the potential for taking advantage of synergies with Babson; and (5) significant ongoing energy savings.

1. It Would Take BECO Well Over a Year to Construct Service for Olin Comparable to the Service Already Available From WMLP

First, while WMLP's facilities are (with the exception of 200 feet of cable) already in place, BECO would have to construct significant new facilities in order to provide service comparable to WMLP. Specifically, in order to match WMLP's wholly underground normal supply, BECO would have to create a brand new circuit by installing 8,500 feet of underground conduit system and 13,200 feet of underground cable. *E.g.*, Exh. BE-ARJ-1, p. 11 (discussing BECO Option 1B); Exh. IR-OC-1-10, Attachment OC-1-10, p. 2 (depicting and describing BECO Option 1B). BECO's estimate of the time required to accomplish this underground construction only, without taking into account the time needed for engineering, design, and to obtain the necessary permits,[11] is 75 weeks, i.e., well over a year. Exh. IR-OC-1-12.

[11] This assumes that BECO could even obtain the requisite permission from Needham to open Great Plain Avenue to install the requisite underground duct bank, a proposition far from certain given that Great Plain Avenue was newly-paved only three years ago, in May 1999. Exh. BE-JJN-1, p. 12. Moreover, even assuming BECO could reduce this time by using more than one crew, BECo's construction time would necessarily be much greater than that of WMLP given that WMLP need only install 200 feet of cable.

2. BECO's Charge to Olin for Connecting to Its System Would Be Approximately $1 Million More Than the Cost to Olin to Connect to WMLP's System

Second, the cost to Olin of connecting to a wholly underground normal service from BECO is vastly greater than the cost of connecting to WMLP's existing underground service. Specifically, BECO has estimated that the cost to Olin of constructing a service that includes a completely underground normal service would be approximately $1.6 million. *E.g.*, Exh. IR-OC-1-10, Attachment OC-1-10, p. 6 (providing cost estimates for five BECO proposals, including $1.6 million estimate for Option 1B).[12] While BECO also presented four other, less costly options for providing electric service to Olin, none of these other options are comparable to the service available from WMLP in that none of them provide for a completely underground normal supply. Exh. BE-ARJ-1, pp. 9-13. Moreover, while BECO has indicated that a revenue credit could mitigate some of this cost, BECO has provided conflicting information regarding how such a credit would be calculated, including whether it would be calculated only based on Olin's load at the end of Olin's first year or perhaps second of usage, which is estimated to be only around 40% of its ultimate total of 3-4 MW, Tr. 3: 371-73, or whether further credit would be given in the future as more load is added. Tr. 5: 811. In any event, the highest estimate BECO has provided for such a revenue credit is $644,000, based on the assumption that Olin's load will be (and that Olin will be given credit for) a 4 MW load (Exh. IR-OC-1-7) construction which still would leave Olin bearing close to $1 million of the construction cost.

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[12] BECO presented five options for serving Olin at the meeting on June 8, 2001. *See* Exh. IR-OC-1-10, Attachment OC-1-10, pp. 1-6. Only one of the options – Option 1B – provides for a completely underground

3. WMLP Service Would Be More Reliable Than BECO Service

Third, WMLP's service would almost certainly be more reliable than service provided by BECO, for the following reasons:

a. WMLP's Existing Underground Circuit is More Than BECO's Proposed, Yet-to-be-Built Underground Circuit.

As noted, BECO has proposed only one option for serving Olin whereby normal service would be provided by means of a dedicated, wholly underground circuit. *E.g.*, Exh. BE-ARJ-2, p. 2. According to BECO's own witness, the expected reliability of this circuit (which has yet to be constructed) would be 0.05 failures per year. Exh. BE-ARJ-1, p. 11.[13] Because, according to BECO, reliability is a function not only of the type of exposure (underground versus overhead) but also of the amount, or length, of exposure, and because WMLP's existing underground circuit (Line 1511) is shorter than BECO's yet-to-be-built underground circuit (10,092 feet versus 13,200 feet), the expected reliability of the WMLP line, using BECO's own expected failure rates, is only approximately 0.038 failures per year, as compared with 0.05 failures per year for the BECO line.[14]

b. Unlike WMLP's Service, Both BECO's Proposed Normal Circuit and BECO's Proposed Back-Up Circuit Would Originate at the Same Station.

The WMLP normal service (Line 1511) and back-up service (Line 1513) originate at completely different substations. Exh. WMLP-1, p. 7. By contrast, both the normal supply and the back-up supply for all of the BECO options would originate at the same substation –

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normal service. *Id*. All of the other options – Option 1A, Option 2, Option 3, and Option 4 – would involve significant overhead exposure for the normal service. Exh. IR-OC-1-10, Attachment OC-1-10, pp. 1, 3-6.

[13] The reliability of normal service for BECO's other four proposals, each of which would involve substantial overhead exposure, would be significantly less, ranging from 0.2 failures per year to 0.6 failures per year. Exh. BE-ARJ-1, pp. 9-13.

[14] 10,092 feet is approximately 1.91 miles, which, at BECO's figure of 0.02 failures per mile per year for underground circuits (*see* Footnote 10, supra), results in a failure rate of 0.038 failures per year.

Station 148 – and would therefore be susceptible to problems affecting the substation itself. *See* Exh. IR-OC-1-10, Attachment OC-1-10, *passim* (showing all circuits originating at Station 148).[15]

c. Unlike WMLP's Service, BECO's Circuits Would be Powered by BECO's Trouble-Plagued Station 148.

The BECO substation that would be used to serve Olin – Station 148 – has been plagued with voltage regulation problems in recent years. *E.g.*, Exh. WMLP-1, pp. 8-9. As WMLP Director Richard Joyce stated in his prefiled testimony:

> The Needham Substation [Station 148] transformers were installed in the late 1950's or early 1960's. The voltage from these transformers is not automatically regulated. During the hot summer days BECO's substation transformers are incapable of providing voltage within acceptable ANSI Standards. According to these standards, the WMLP should receive voltage at ±5% of 13.8 kV. The minimal acceptable level would be 13.1 kV. Since 1996 the WMLP has received voltages at 12.6kV and below. During 2 out of the last 3 summers the voltage from Needham was so low that Wellesley College relays tripped, automatically shutting down their cogeneration facilities. Given the extremely poor 5-year record of voltage and reliability problems at Station 148 the additional load required to serve Olin could create significant problems for Needham and Wellesley businesses and residents.

Id. While BECO has indicated that it has the requisite approval to begin to remedy this problem by replacing one of the transformers with a transformer with automatic voltage regulation, *see* Exh. IR-OC-2-3, Attachment, BECO's position on when it intends to do so has been less than consistent. For example, the document authorizing replacement of the two Needham transformers indicates that, while replacement of the first transformer is needed by

[15] While Mr. Jessa testified that the two lines would come from different sides of the substation, that would not prevent a major event at the substation itself from affecting both lines. *See* Tr: 6: 870.

June 1, 2002, the equipment could not in fact be delivered until August 2002 (Exh. IR-OC-2-3, Attachment, p.1); Mr. Jessa's prefiled testimony indicated that the transformer would not be replaced until the Fall of 2002 (Exh. BE-ARJ-1, p. 14); and Mr. Jessa's oral testimony indicated, without explanation for the variance with his prefiled testimony, that replacement would be accomplished by June 1 (Tr. 6: 867). Suffice it to say that, until the replacement of the first transformer actually occurs, the timing is far from certain. Moreover, and in any event, only one of the two Station 148 transformers is scheduled to be replaced in 2002: the other will continue to be incapable of automatic voltage regulation, and, to the extent it is used to power either Olin's normal service or its back-up service, problems may persist.

d. BECO's Record of Service is Poor as Compared with WMLP's Record.

BECO cannot equal WMLP's record of service. Indeed, while WMLP has had no outages in the Babson service area for at least the last seven years, Exh. WMLP-1, p.8, Olin experienced an outage of its BECO service of 45 minutes duration just this year, on January 27, 2002, Exh. OC-5 and has experienced other outages for period exceeding one-half hour. Exh. OC-1, ¶ 3. Further, the record shows very significant problems with BECO customer satisfaction. Tr. 3: 373-374; RR-WMLP-3; Exh. OC-2, pp. 18-19, Attachment B. Indeed, the Department itself recently assessed a penalty of $3,794,200 against BECO for failing to meet performance goals for the twelve months ending August 31, 2001 for three measures, including SAIDI and SAIFI. D.T.E. 01-71A, p. 14 (2002).[16]

[16] The Department offset this penalty by $587,059 because of BECO's performance for billing adjustments, resulting in a net penalty of $3,201,141. D.T.E. 01-71A, p. 14.

4. Olin Will Enjoy No Synergies With Babson if Required to Take Service From BECO

Fourth, while Olin can take advantage of significant synergies with Babson if permitted to take service from WMLP, these opportunities will be lost if Olin is required to take service from BECO. Specifically, Olin would not be able to save on ongoing maintenance by locating its switchgear with Babson's switchgear and by sharing manholes and duct bank with Babson. *See* Exh. OC-2, p. 10.

Moreover, if WMLP provides service, Olin and Babson, as part of their Collaborative Agreement, can jointly use Babson's professional staff to maintain their respective electric services, thereby enabling Olin to benefit from the close working relationship that Babson personnel and WMLP have developed over the years. Exh. WMLP-1, pp. 7-8. By contrast, if required to take service from BECO, Olin not only would forego these advantages, but also could well find itself subject to the same indifference and lack of responsiveness that have marked BECO's attitude toward Olin concerning the service Olin is already receiving from BECO along Great Plain Avenue.

For example, Olin began complaining to BECO by telephone about flickering lights and related problems in its temporary administrative buildings about November 1999. Exh. OC-2, p. 3. After Jeffrey Niro was assigned the Olin account in February 2000, Olin began directing its complaints to him. *Id*. Indeed, while Mr. Niro contended in his prefiled testimony that he first heard of Olin's reliability issues in a July 10, 2000 letter from Mr. Hannabury, Mr. Niro was forced to admit on cross-examination that, in fact, he met with Olin employee Manny Amaral months earlier, in March 2000, and that Mr. Amaral told him at that time of Olin's problems with its BECO electrical service. Tr. 3: 413-18; *see also* Exh. OC-2, Attachment A,

p. 4. Moreover, while Mr. Niro represented to Mr. Amaral on March 31, 2000 that BECO would install equipment to monitor the situation and would otherwise research the problems, *see* Exh. OC-2, Attachment A, p. 4, in his oral testimony Mr. Niro could not say whether, as of October 4, 2000 – more than six months later – this equipment had ever been provided. Tr. 3: 437-38.

In fact, this equipment was **never** installed. OC-2, p. 3. While, frankly, it is difficult to believe that Mr. Niro, as the BECO Account Executive for Olin throughout the relevant period of time, did not know that the equipment was never provided, it would be equally disturbing were it in fact true that he did not bother to monitor the situation, and indicative of the deficient attitude toward customer service that has plagued Olin's relationship with BECO to date. Indeed, while Mr. Niro essentially pleaded ignorance regarding whether BECO had or had not taken certain steps to research Olin's service problems, the documentary evidence, including an October 4, 2000 email message from BECO employee June Pham, establishes quite convincingly that BECO did not even begin looking at data that Olin itself provided in July 2000,[17] much less bother to consult its own records, until on or about October 4, 2000, almost a year after Olin had started complaining about the service. Tr. 3: 429-43; Exh. IR-OC-1-6, Attachment OC-1-6, p. 5 of 17 of "Issues Profile Report." And, although BECO finally took steps to address Olin's concerns in November 2000, these measures did not eliminate the problems and, to this day, Olin continues to have problems with flickering lights in the temporary administrative buildings that BECO serves. Exh. OC-2, pp. 3-4.

[17] Olin has an uninterruptible power supply, or "UPS," system that records some information relevant to service quality.

5. BECO's Rates Are 60% Higher Than WMLP's Rates

The fifth, but by no means least, benefit to Olin of taking service from WMLP would be the significant and ongoing cost savings that Olin would realize by virtue of WMLP's substantially lower rates. In order to compare Olin's likely experience under WMLP's rates versus BECO's rates, WMLP consultant PLM Electric Power Engineering ("PLM") used Babson as a proxy and compared Babson's actual charges for calendar year 2001 under WMLP's rates with the estimated charges Babson would have realized had it been receiving service under BECO's Rate G-3 with default service. Supplemental Exh. IR-BE-1-8. PLM estimated that Babson would have paid BECO $2,955,064 at an average cost of 11.9 cents per kWh, as compared with actual payments to WMLP of $1,846,942 at an average cost of 7.4 cents per kWh. *Id*. Expressed in percentage terms, PLM determined that the cost of power from BECO in 2001 was 60% higher than the actual cost of power from WMLP. *Id*. These results are consistent with those achieved in September 1999, when LaCapra Associates used the BECO and WMLP rates in effect as of September 7, 1999 to compare the energy costs to Olin after full build-out. LaCapra Associates determined, based on those rates, that Olin would save $432,946 annually by taking service from WMLP, and that these savings would increase to approximately $790,000 annually as of May 31, 2002, when one of WMLP's supply contracts expires and WMLP customers will realize an approximate 20% reduction in rates. Exh. IR-BE-2, Exh. 2, pp. 26-29.

6. Conclusion

In sum, based on any relevant measure, it would be significantly more advantageous for Olin to receive electric service from WMLP than for Olin to receive service from BECO.

B. Olin's Decisionmaking Process Was Fair and Reasonable

As Mr. Hannabury testified, Olin's sole interest throughout this process has been to obtain the lowest-cost, most reliable electric service possible.

> My goal, as I stated earlier in all of this, is to provide the most reliable, highest quality electrical service to Olin College that I can, and at the best price that I can. And regardless of whether it was coming from Wellesley Light or Boston Edison, I wanted to get the best possible solution for the college. Wellesley Light has served the area. We consider ourselves to be in the franchise area. We could go with them. If there was another option to go with Boston Edison that was a viable option, we could have done that, too, but we weren't presented with any viable options.
>
> Tr. 2: 130.

Naturally, ongoing customer service is a factor that Olin considered as well. The record clearly shows that Mr. Hannabury gathered much of the comparative information described in the preceding section and reasonably concluded that BECO service would be considerably more costly for a level of service comparable to that which WMLP offered:

> Contrary to the unfounded allegations of BECO witnesses, I have indeed performed a reasonable "apples to apples" comparison. Using the most effective connection points for each option and using alternatives that are as comparable as possible in terms of reliability, I have concluded that connecting with WMLP will provide Olin savings in excess of a million dollars.
>
> Exh. OC-2, p. 13.

BECO's less costly options all contemplated normal service that had varying amounts of overhead exposure and were thus inherently less reliable (but still more costly) than WMLP service. *See* Section IV.B.3. *supra*.

BECO has tried to create a strawman to knock down in this regard, but the illogic and impracticality of its suggestions doom that effort. In particular, BECO asserts that Olin's

comparison of the costs of Olin's private property electric lines for BECO service versus WMLP service is an apples-to-oranges comparison. *See* Exh. BE-ARJ-1, pp. 16-18.

First, contrary to BECO's assertion, the record shows that the comparison was and is a fair one. As common sense dictates, Olin must, of necessity, install lines to get the electricity from the point at the Olin property line where either the WMLP or the BECO system leaves off to the distribution loop and the buildings to be served. Each of BECO's five options involves a normal service entering Olin's property from Great Plain Avenue, and a back-up line entering at a different point on the campus, along Burrill Lane, so each of them requires installation of two duct banks for at least some of the distance to the Olin distribution loop. Exh. IR-OC-1-10, Attachment, *passim*. Mr. Hannabury calculated the lengths of cable needed to bring the normal service along Olin Way and the back-up line along Burrill Lane, coming together at switchgear located in the most efficient place possible. Exh. OC-2, pp. 9-11. Because the WMLP normal and back-up lines would enter the Babson property at the same place and could be brought from that point to the Olin campus together, there are obvious inherent savings. *Id*. In that regard, BECO's incessant harping on the location of the Olin switchgear is a total red herring, since, again, Olin somehow has to bring the electricity from its property line to its distribution loop and thence to its buildings, and the total length of cable required to accomplish this is the same regardless of where along the cable the switchgear is located. *Id*. The bottom line is that Olin, in comparing these private property costs, assumed the most efficient connections for each of WMLP and BECO.

Second, and perhaps even more importantly, by focusing on the private property costs, BECO diverts attention from by far the largest disparity between the WMLP and the BECO

proposals: the cost to connect to the utility's dedicated underground service, which, in the case of BECO, first requires that the underground service be constructed. As discussed above, the charge to Olin for such a connection to BECO is $1.6 million. The cost for such a connection to WMLP is $18,000. To focus as BECO does on the private property costs, which amount to only a fraction (less than 5%) of the up-front cost savings that Olin would realize by taking service from WMLP, is grossly misleading.

V. BECO'S COMPLAINTS ARE WITHOUT MERIT

BECO has raised a number of issues during these proceedings that serve only to distract from the central issue of whether Olin should be permitted to take service from WMLP.

First, BECO has attempted to distort the record regarding Olin's receipt of temporary electrical service in an effort to paint Olin as a party coming to the Department with "unclean hands." *See* Motion of Boston Edison Company, d/b/a NSTAR Electric, for an Expedited Order to Maintain Status Quo Ante ("Emergency Motion"), pp. 11-12. Indeed, BECO even went so far as to seek emergency preliminary relief requiring Olin to sever its temporary service and instead take temporary service from BECO. Emergency Motion, passim.

BECO's effort to use Olin's temporary service affirmatively against Olin founders on bedrock, however, because it assumes the answer to a central question at issue in this proceeding, namely, whether Olin's new campus is being built within WMLP's service territory or BECO's service territory. *See* Section II. While BECO maintains that Olin's new campus is part of its exclusive service territory and that Olin's receipt of service from any other source runs afoul of G.L. c. 164, § 1B(a), *see* Emergency Motion, p. 6, WMLP and Olin believe that, not only is BECO wrong, but that Olin's new campus is actually in WMLP's

service area. *E.g.*, Exh. WMLP-1, p. 3; Exh. OC-1, ¶ 2; Opposition of the Wellesley Municipal Light Plant to Boston Edison Company's Motion to Maintain the Status Quo, p. 2; Tr. 3: 363.

Indeed, BECO's attempt use Olin's receipt of temporary service as a sword against Olin represents another instance of BECO's questionable candor in this proceeding. The very fact that BECO would seek emergency relief on this issue is wholly at odds with the fact that, as Mr. Niro admitted during cross-examination, BECO knew as early as April of 2000 that power was being supplied to the construction site of Olin's new campus by somebody other than BECO. Tr. 3: 409-11. Indeed, Mr. Niro himself wrote a letter to Mr. Hannabury on November 15, 2000 discussing Olin's receipt of temporary service from the Babson campus, completely dispelling the notion that any "emergency" existed when, well over a year later, BECO filed its Emergency Motion. *See* Exh. IR-OC-1-6, Attachment OC-1-6, p. 22.

Similarly, Mr. Niro's professed surprise that Olin's temporary power came from Babson's switchgear, *see* Exh. BE-JJN-1, p. 10, is completely belied by his own correspondence from 2000 and 2001, in which he consistently referred to Olin's temporary service as coming from Babson. For example:

> "I called the Needham wiring inspector today and he told me he had done an inspection for a 13.8kv temporary service for construction on the Olin campus. These lines are fed overhead from the **Babson campus** to a riser on a pole and fed underground to a padmount transformer just past the construction trailers. The secondary power for the trailers also comes from **Babson** and this probably should have been addressed earlier as well. My question regarding what service territory the 13.8kv service was in was answered by the fact the Needham inspector looked at the job. I know we sent a letter to Olin saying they could not take power from **Babson** and I agree with you that perhaps it is time for **Babson** to get a letter from legal to the same effect."

> Exh. IR-OC-1-6, Attachment OC-1-6, Issues Profile Report, p. 6 of 17 (11/8/00 email, J. Niro to C. Keuthen)(emphasis added).
>
> "Olin has been in discussions with Wellesley Municipal; Dick Joyce (WMLP) told us that he told Olin they would not supply them with power unless a letter was received from BECO saying okay or a ruling from the DTE. He thought Olin was going to pursue through the DTE. **Babson** has capacity to feed Olin through their switchgear because of a new line brought in to **Babson** recently."
>
> -- Exh. IR-OC-1-6, Attachment OC-1-6, Issues Profile Report, p. 10 of 17 (4/6/01 notes by J. Niro)(emphasis added).
>
> "I drove through the Olin campus today and I noticed that they have extended the 13.8 'temp' service that they ran from the **Babson campus** about another ten poles further into Needham. They appear to terminate at another building that looks like it may be a pre-fab but fairly large. This certainly looks like Olin has every intention to continue receiving power through that **Babson** feed."
>
> -- Exh. IR-OC-1-6, Attachment OC-1-6, Issues Profile Report, p. 16 of 17 (7/18/01 email, J. Niro to W. Stowe)(emphasis added).

Another red herring that BECO has interjected into the proceedings is so-called "creative conveyancing." Specifically, BECO has claimed that Olin's purchase of a small parcel of land in Wellesley on which, initially, it was contemplating locating its switchgear if served by WMLP constitutes "creative conveyancing" within the meaning of *Massachusetts Electric Company*, D.T.E. 98-122, p. 11 (2002). *See* Reply of Boston Edison Company, d/b/a NSTAR Electric, to Franklin W. Olin College of Engineering's and Wellesley Municipal Light Plant's Oppositions to an Expedited Order to Maintain Status Quo Ante, pp. 6-8. This is a pure diversionary tactic, as evidenced by several factors. First, while Olin has always been confident it has the right to take service from WMLP, it has respected WMLP's concerns, one of which was that WMLP facilities be located within Wellesley, and it was to accommodate that concern that the land was purchased. Tr. 1: 37-38. Second, and relatedly, Olin's current preference is to locate its

switchgear with Babson's switchgear on Babson's campus, an option that (1) addresses WMLP's concern that its facilities be located in Wellesley; (2) enables Olin to take advantage of synergies with Babson; and (3) renders completely moot BECO's claims of "creative conveyancing," since the parcel is not currently expected to play any role in Olin's receipt of electrical service. Exh. IR-BE-1-5 Suppl.; Exh. OC-2, pp. 8-9. Third, at the time Olin purchased the land it plainly was not seeking to circumvent the Department's interpretation of G.L. c. 164, § 1B(a) in *Massachusetts Electric Company* regarding "creative conveyancing," since the purchase of the land occurred more than three months before the Department issued the order. Exh. IR-BE-1-4. Fourth, all that the Department indicated in *Massachusetts Electric Company* was that "creative conveyancing" cannot be used affirmatively to circumvent § 1B(a), *i.e.,* that it cannot be used as the basis for taking service from one of two distribution companies. Nothing in the order says or suggests that, assuming *arguendo* an entity were found to have engaged in "creative conveyancing," such would negate other, valid bases for arguing that service from a particular distribution company was appropriate – *e.g.*, that the location to be served is within that company's pre-1997 service territory in any event. In other words, "creative conveyancing" is not a basis for *denying* service by a particular distribution company; rather, it is merely not a basis for *permitting* such service and is thus, at the very worst, a neutral fact.

Finally, BECO has attempted to argue that Olin did not give BECO sufficient information regarding its needs. *E.g.*, Exh. BE-JJN-1, p. 9. The record reveals, however, that as of the time it presented its five options to Olin,[18] BECO knew the basic facts necessary to developing options to serve Olin, including: the total expected load after full build-out, *e.g.*, Exh. IR-OC-1-

[18] Indeed, BECO knew much of the relevant information from the very beginning of the process, when BR+A provided BECO with loads, campus location, and other such information in May 1999. *See* Exh. IR-OC-1-6, pp. 1-15.

6, pp. 1-15; the fact that initially only part of this load would be coming on line, *e.g.*, Exh. OC-2, p. 15; the location of the new campus, *Id.*; the fact that Olin wanted both a normal and a duplicate supply, *e.g.*, Exh. IR-OC-1-6, pp. 10-15; and the fact that Olin, as a new engineering school, was particularly concerned that its electrical service be high-quality and reliable, *e.g.*, Exh. OC-2, p. 15. Indeed, during cross-examination Mr. Niro conceded that in its dealings with Olin there was no specific information that BECO did not have that it requested Olin to provide. Tr. 3: 476-477. Moreover, it appears from a review of redacted work orders that BECO provided in discovery that the information that a prospective customer provides is essentially the same as that which Olin provided to BECO, including much information provided in May 1999 in communications to BECO from Olin's consultant, BR+A. Compare Exh. IR-OC-2-9, Attachment with Exh. IR-OC-1-6, Attachment. Indeed, given Mr. Jessa's candid acknowledgment that BECO would not provide any more detailed engineering work beyond the five options presented at the June 8, 2001 meeting between BECO and Olin without a work order, and given the persistent requests from BECO to Olin to initiate a work order, it is plain that what BECO really sought from Olin was not more information but rather a commitment to take service from BECO. Exh. BE-ARJ-1, p. 9 ("We informed Olin, as we had on many prior occasions, that we would require a work order request from them before starting any more detailed engineering work"); *see also*, Exh. IR-OC-1-6, Attachment, p. 20 (6/13/00 letter, J. Niro to R. Miller), p. 22 (11/15/00 letter, J. Niro to S. Hannabury). Issues Profile Report, p. 1 (email from J. Niro to J. O'Grady 5/13/00), p. 15 (email from J. Niro to S. Hannabury, 7/12/01).[19]

[19] Notwithstanding Mr. Niro's oral testimony that initiating a work order with BECO does not necessarily amount to a commitment to take service, *see* Tr. 3: 407-408, in the context of this relationship initiating a work order surely would have connoted an Olin decision to take service from BECO. Indeed, while BECO's assertions that Olin has actually misled BECO are frivolous, *see* Exh. BE-JJN-1, p. 5, BECO would have had good grounds to complain had Olin initiated a work order, caused BECO to begin the permitting process and order equipment, and then told BECO that it had decided to seek service from WMLP.

VI. DISCUSSION OF LAW

A. Summary

There is no well-developed legal rule establishing definitively the rights of the respective parties regarding electric distribution service in borderline service disputes. Although St. 1997, c. 164, §193 (G.L.c. 164, §1B(a)) establishes that electric distribution service territories are defined first by areas "actually served in July 1, 1997" and second "following to the extent possible municipal boundaries," the Department has found it has discretion in implementing that statutory language. *Massachusetts Electric Company,* D.T.E. 98-122, p. 7 (2002). In part, the need for Department discretion results from a wide range of factual circumstances and the likelihood that an inflexible rule would result in anomalies. *Id.* Thus, the unique facts of this case are particularly important to consider here. Further, guiding principles can be drawn from Department precedent – most notably the recent *Massachusetts Electric* decision.

Those principles are as follows:

1. Municipal boundaries do not in all cases define the service territory boundary (Massachusetts *Electric,* D.T.E. 98-122, at 7 (2002));

2. Without clear documentation of exclusive rights to serve any certain town (by statute or municipal grant), the utility that services other parts of a municipality can not rely on any presumption of right to serve (*Ecological Fibers, Inc.* , D.P.U. 85-71 (1985));

3. Depending on the circumstances, electric service consumed in a given utility's service territory when not supplied by that utility may not be deemed to be a service arrangement crossing a service territory boundary (*Massachusetts Electric,* D.T.E. 98-122, at 9 (2002)); and

4. Where no absolute rights to serve exist, the Department should consider other factors such as: (a) benefit to customer; (b) absence of duplicative plant investment; and (c) absence of harm to ratepayers of either utility (*New Bedford Gas & Electric Light Co. and Board of Selectmen of Lakeville,* D.P.U. 12765, 12799 (1959)).

In Olin's case, the established factual circumstances fit within the precedential parameters for allowance of customer choice.

B. The Department's Decision In D.T.E. 98-122 Supports Olin's Position That WMLP Service Is Proper

The Department's recent decision in *Massachusetts Electric* provides strong support for Olin's position that distribution company franchise areas do not always equate to municipal boundaries, and that, where they do not, the Department must consider the interests of the customer. *See* Olin Opposition to Boston Edison's Motion to Maintain the *Status Quo Ante*, pp. 11-12. In *Massachusetts Electric,* the Department stated:

> [T]he General Court was aware in 1997 of the patchwork quilt of service territories of the seven investor-owned electric companies and forty municipal electric boards, which had developed over a century throughout the Commonwealth. The public interest in resolving franchise boundary disputes has been a matter of occasional public dispute since the earliest decades of the electric industry. See e.g., Weld v. Board of Gas and Electric Light Commissioners, 197 Mass. 556, 559-60 (1908) (resolving a franchise boundary dispute that arose in 1902). Indeed, the very passage of St. 1997, c. 164, § 193, evidences awareness of this potential for dispute and the consequent need to regularize boundaries statewide. The legislative mandate to the Department was, as a result of this awareness, couched in terms that accorded the agency a measure of discretion in resolving disputes where the boundaries between service territories implicated municipal boundaries. The statute clearly envisions circumstances where cleanly following municipal boundaries may not be possible without giving rise to anomalies. MECo's interpretation of § 1B(a) is strained and constraining. The statute's wording is much more general than MECo asserts; and the statute recognizes and provides for the administrative resolution of complex factual disputes that statutory law cannot resolve in advance and in detail. Hence, it

> follows that the Department has discretion to depart from municipal boundaries in resolving service territory disputes, if facts and fairness so warrant.
>
> D.T.E. 98-122 at pp. 6-7.

The ruling squarely supports Olin's position that the area owned and formerly owned by Babson at least a couple hundred feet into Needham and consistently and exclusively served by WMLP remains area that WMLP may serve. The facts here surely qualify as a basis for an exception from service territory boundaries being the same as municipal boundaries: Olin's buildings are in the precise area in Needham where WMLP has provided service for many years; Babson's buildings similarly at the municipal border and located in Needham are served by WMLP; there are significant advantages offered by WMLP's existing physical plant that yield considerable benefits of cost savings and efficiency *(e.g.*, avoiding the need for construction of thousands of feet of additional line by BECO, which would include excavation of a major thoroughfare); Olin's close collaborative relationship with Babson results in considerable interests by Olin in Wellesley that justify Olin and Babson sharing a common electricity provider. *See* Section I.B.2. *supra.*

The statutory interpretation that the Department rejected in *Massachusetts Electric* – that municipal boundaries necessarily define franchise areas – is the same interpretation that BECO has urged in this case. Acceptance here of BECO's argument would result in the anomaly of Babson having to sever electric service for the portion of its buildings located in Needham and take such service from BECO instead, notwithstanding that the vast majority of Babson's campus, both in Wellesley and in Needham, has historically been served by WMLP. Another anomaly that arises is that WMLP service was proper while Babson owned the property in question, but would not be proper when Olin, as a sister college, owns the property. In rejecting

a rigid interpretation of the statute, the Department recognized that fairly resolving situations such as that at hand requires consideration of the needs and concerns of the customer *Massachusetts Electric* at p. 8. Focusing on customer concerns is particularly appropriate here, where the customer is seeking not to maximize its profit, but to stretch its endowment to provide scholarship based education to deserving young students. Exhibit OC-1 (Hannabury Affidavit, ¶ 1, Exhibit B); Exh. OC-2, p. 13. Inability to achieve such savings will impact Olin's ability to provide scholarships. *Id.*

Another anomaly that would result from a ruling in favor of BECO has been explored at length on the record. Specifically, in several other cases of borderline customers with all or part of their electric consuming facilities in Needham, BECO has either not opposed the service of those customers by WMLP, or has affirmatively sought WMLP to provide such service. Exh. WMLP-2, pp. 1-4. The result has been that WMLP now serves such customers: *i.e.* Cartwright Road, Design Housing (Grove Street), MWRA, and Babson College. *Id.* Olin's situation is very much like those just mentioned, except for the fact that BECO wants to force Olin to take service from BECO. For Olin, like the customers in each of the referenced cases: (i) WMLP facilities, adequate for the customers' requirements, are closer; (ii) interconnection with WMLP is less expensive; and (iii) WMLP is willing to serve. Perhaps for those other customers, BECO was taking the non-partisan position of seeking what was best for all parties in terms of efficiencies and avoiding inefficient and costly construction. However, here BECO's position yields inefficiencies and even redundant plant. Adequate WMLP plant exists for the Olin connection with Wellesley, yet BECO seeks to force Olin to pay about $1,600,000 for new facilities on BECO's system that otherwise would not be required. That fact alone flies in the face of sound regulatory policy and suggests that BECO,

in the positions it has taken, is acting in an unfair, if not discriminatory, manner toward Olin. Mr. Joyce of WMLP made the point elegantly as follows:

> From a customer perspective, I believe its paramount that all Massachusetts electric customers are treated fairly. No customer should be penalized or subjected to a different standard or forced to unnecessarily expend significant sums of monies just to satisfy a utility's profitability criteria.
>
> BECO's attempt to establish one set of rules for one customer, the MWRA, and an entirely different set of rules for Olin undermines the creditability and integrity of the whole regulatory process. A process whose very existence is predicated on the protection of consumer rights and to ensure all customers are treated equitably.
>
> Exh. WMLP-2, pp. 4-5

As discussed below, there are many reasons why the portion of Needham that is in dispute here should be served by WMLP. Finally, the policy reasons alluded to by BECO are not applicable here with respect to the new campus electric consumption that is at issue, Olin is not an existing customer that is trying to evade the regulatory scheme to avoid paying transition charges. In fact, Olin in no way caused, or benefited from, those costs that form the basis of transition charges.

Because G.L. c. 164 §1B(a) only states that distribution company service territories shall follow municipal boundaries "to the extent possible" and the Department has ruled that it has discretion to consider specific facts, it is only logical for the Department to consider prior and exclusive service to the area by a neighboring utility (WMLP) and the relative engineering or economic efficiencies resulting from the choice of electric distribution company to serve that area it had previously not served (*See* Sections III.A., III.B. IV.A.).

C. The Record Is Barren Of Support For Boston Edison's Assertions Of Exclusive Franchise Rights Over The Borderline Area In Question

Before the Department issued its order in *Massachusetts Electric*, D.T.E. 98-122, its most recent and relevant order on border disputes was *Ecological Fibers, Inc.*, D.P.U. 85-71 (1985).[20] There the Department, in allowing the customer to take service from Massachusetts Electric, relied heavily on the fact that Fitchburg Gas & Electric had "failed to demonstrate that it had an exclusive franchise right in the Town of Lunenburg." *Id.* at 4. In fact, the identical situation exists here. In response to Olin's discovery, seeking all documentary basis for BECO's claim of an exclusive franchise for all of Needham, including the area of Olin's new campus that had historically been served by WMLP, BECO's response fell far short of supporting its claim. *See* Section II.A. *supra*.

D. Olin's Plan Is To Take Service In Wellesley

As described above, Olin proposes to take electric service from WMLP at Olin's switchgear co-located with Babson's switchgear near the WMLP primary line. Exh. IR-BE-1-5 Suppl. The equipment and Olin's receipt of electric service would be in Wellesley and would not be encroaching in BECO's service territory at all. Olin would have all necessary legal rights for location of the switchgear on Babson property in Wellesley and for the distribution lines (that Olin would own) used to convey electricity to Olin's electricity-consuming facilities. Tr. 3: 377. Further, the record is clear that the purpose of this particular electric system configuration is to achieve the greatest efficiency by coordinating

[20] While the Department order in D.T.E. 98-122 made some effort to restrict the decision in D.P.U. 85-71, that restriction apparently relates to the fact that the customer's only interest in the Massachusetts Electric service territory was a piece of land bought after the proceeding began. Such purchase apparently had the sole purpose of creating some property rights for the customer in Massachusetts Electric service territory.

underground construction and ongoing maintenance with Babson. In this specific context, Olin would be taking service in Wellesley (indisputably not BECO service area) and it is because of such "legitimate" purpose, there needn't be any concern about "creative conveyancing" as discussed in D.T.E. 98-112, p. 11.[21]

E. Other Factors Also Show The Reasonableness Of Service To Olin's New Campus By WMLP

Once it is determined that no definitive exclusive right to serve the area in question resides in BECO, the Department should reasonably consider the relative efficiency and benefits or detriments to Olin's proposal. Such approach has been used by the Department before. In *New Bedford Gas & Electric Light Co. and Board of Selectmen of Lakeville*, D.P.U. 12765, 12799 (1959), the Department considered whether a newly constructed school in Lakeville should be served by Middleboro Electric (the entity providing service almost everywhere else in Lakeville) or New Bedford Gas & Electric Light Co. ("New Bedford"). There the Department ruled that service from New Bedford was proper because the school could be more efficiently served by New Bedford and because the record showed no detriment resulting to customers of either Middleboro Electric or New Bedford: "it appears that the particular customer involved would be better served by [New Bedford] and it so requests." *Id.* at 8. Therefore, the Department found that service by New Bedford was in the public interest.

[21] Given BECO's efforts to clutter the record with references to "creative conveyancing" regardless of the inapplicability of such concept, its seems likely that BECO will again raise that spectre to suggest that Olin's burden of proof is very heavy under D.T.E. 98-122. However, the whole concept is totally moot here as the real estate acquisition BECO labels as creative conveyancing is no longer Olin's preferred or planned location for its switchgear. Exh. IR-BE-1-5 Suppl.. Further, at the worst, the fact of Olin owning such parcel is neutral and it certainly does not take away all the other bases discussed herein that constitute a basis for WMLP service to Olin. *See* Section V, *supra*.

Here, WMLP already has sufficient infrastructure in place to provide the service to Olin, while BECO would have to make very significant system improvements that would involve considerable cost to Olin and likely considerable delay. This simple fact shows that service to Olin by WMLP is more efficient in the broad sense and certainly provides considerable benefits (economically and logistically) to Olin. Further, the record here shows no detriment to customers of either WMLP or BECO. As WMLP is strongly supporting Olin's Petition (and presumably the added load on existing infrastructure provides a financial benefit), the Department can reasonably conclude that BECO customers are not harmed because nothing will change for BECO. BECO will not have to construct additional plant, or carry additional load and it will lose no existing revenues.[22]

For all the reasons, the public interest (particularly given Olin's public interest mission) will be served by allowing WMLP to provide distribution service to Olin. Indeed, the "facts and fairness" applicable to Olin mandate allowance of WMLP providing electric service to Olin.

VII. CONCLUSION

Mr. Hannabury very concisely encapsulated this case as follows:

> Q. What facts and fairness would you urge, put forth to the Department for them to consider in resolving the matter at hand?
>
> A. I think the facts that I would urge the Department to consider are the unique situation that we're discussing here, that Olin College is building its campus on the land that has been

[22] Although BECO made a weak effort through Witness Niro to show benefits to its customers from forcing Olin to take service from BECO, such benefits would result from Olin's shouldering costs it did not cause. Such an inefficient economic result occurs either because G-3 customers provide more return to BECO than other customers or because Olin, as a new customer that is not benefiting from electric restructuring by being served by a competitive supplier, would have to bear transition costs.

> served by Wellesley Light for decades; that they are ready, willing and able to provide service.
>
> I would argue that the facts that Wellesley has underground service to the doorstep of where we would be taking out service from them provides for a greater degree of reliability than Boston Edison can provide without a substantial capital investment.
>
> To the fairness, I would raise the relative costs differential. In fairness to the college, it would be much better for us to be able to only expend $18,000 for the off-campus connection to Wellesley Light, as opposed to, depending on the option, up to $1.6 million to connect to Boston Edison.
>
> All of that money that we save can stay in our endowment and will continue to provide funds that we can use to provide scholarships to students at Olin College.

Tr. 4: 375, 376

For all the reasons discussed herein and as shown on the record, Olin respectfully urges the Department to make the finding of fact and conclusions of law as set forth in Attachment C hereto and to allow WMLP to serve Olin's new buildings (present and future)

Respectfully submitted

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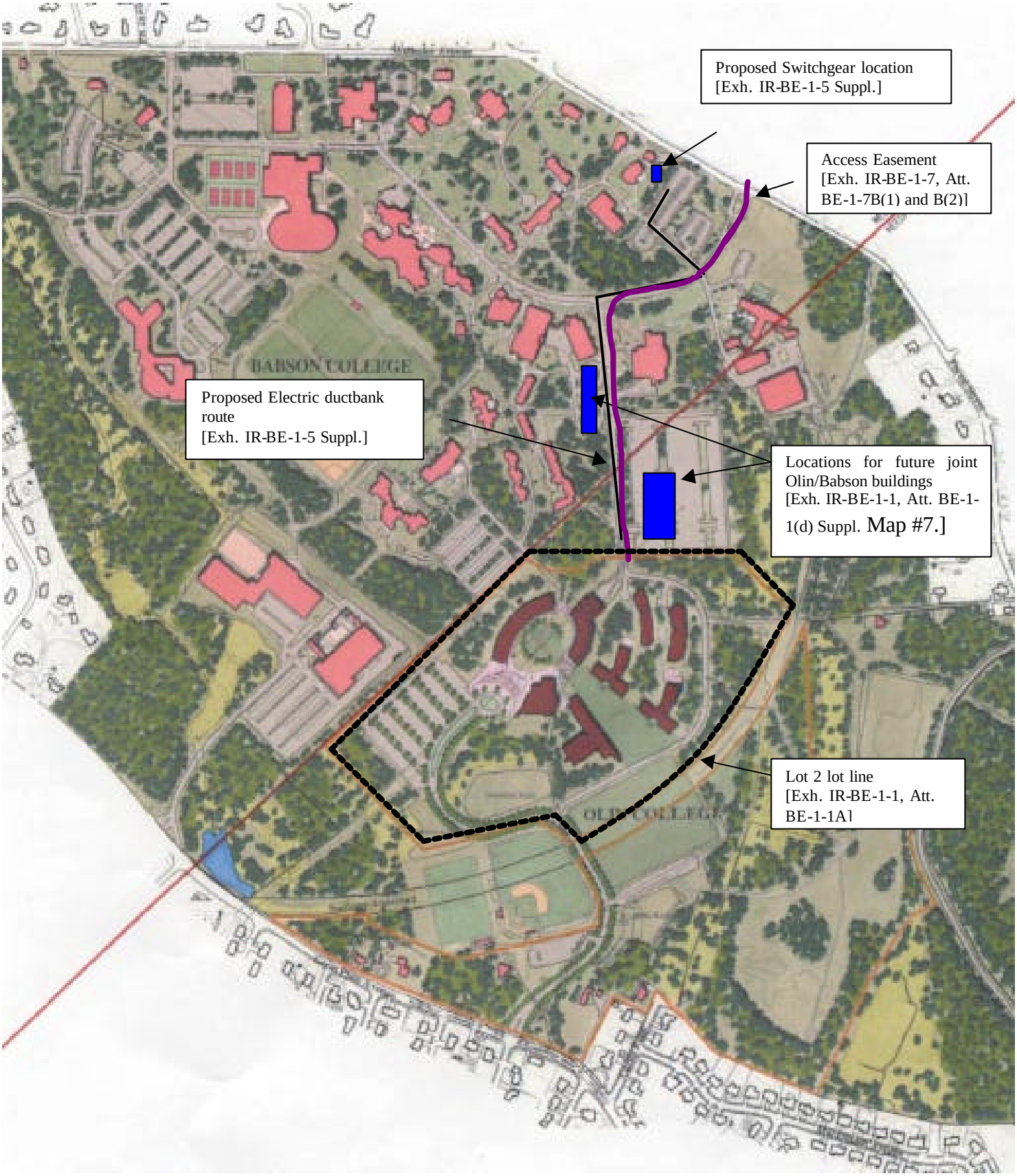
ATTACHMENT A

ATTACHMENT B



ATTACHMENT C